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To amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2001

Mr. ENGLISH (for himself, Mr. MATSUI, Mr. HAYES, Mr. CONYERS, Mr. TANNER, Mr. SHERWOOD, Mr. HEFLEY, Mr. EHRLICH, Ms. ESHOO, Mr. MCINNIS, Ms. DUNN, Mr. WATKINS, Mr. SAXTON, Mr. MEEKS of New York, Mr. HASTINGS of Washington, Mr. SMITH of Washington, Mr. RADANOVICH, Mr. THOMAS M. DAVIS of Virginia, Mr. MOORE, Mr. SMITH of Texas, Ms. GRANGER, Mr. DOOLEY of California, Mr. BAIRD, Mr. POMBO, Mr. FOLEY, Mr. BALLENGER, Mr. MCDERMOTT, Mr. THORNBERRY, Mr. SHIMKUS, Mr. ALLEN, Mr. HINOJOSA, Mr. SHOWS, Mr. LAMPSON, Mr. DREIER, Mr. ISTOOK, Mr. BAKER, Mr. BURR of North Carolina, Mrs. MEEK of Florida, Mr. ISRAEL, Mr. OWENS, Ms. CAPITO, Mr. GOODLATTE, Mr. HAYWORTH, Mr. FORD, Mr. BLAGOJEVICH, Mrs. JONES of Ohio, Mr. GOODE, Mr. DICKS, Mr. WICKER, Mr. BALDACCI, Mr. THOMPSON of Mississippi, Mr. GIBBONS, Ms. JACKSON-LEE of Texas, Mr. PETERSON of Pennsylvania, and Mr. HINCHEY) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Broadband Internet Access Act of 2001''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The Internet has been the single greatest contributor to the unprecedented economic expansion experienced by the United States over the last 8 years.

(2) Increasing the speed that Americans can access the Internet is necessary to ensure the continued expansion.

(3) Today, most residential Internet users, especially those located in low income and rural areas, are extremely limited in the type of information they can send and receive over the Internet because their means of access is limited to ''narrowband'' communications media, typically conventional phone lines at a maximum speed of 56,000 bits per second.

(4) Similarly, small businesses in low income and rural areas are also deprived of full information access because of their dependence on narrowband facilities.

(5) By contrast, many residential users located in higher income urban and suburban areas and urban business users can access the Internet from a variety of carriers at current generation broadband speeds in excess of 1,500,000 bits per second, giving them a choice among carriers and high-speed access to a wide array of audio and data applications.

(6) The result is a growing disparity in the speed of access to the Internet and the opportunities it creates between subscribers located in low income and rural areas and subscribers located in higher income urban and suburban areas.

(7) At the same time, experts project that, under current financial and regulatory conditions, the facilities needed to transmit next generation broadband services over the Internet to residential users at speeds in excess of 10,000,000 bits per second will not be as ubiquitously available as is telephone service until sometime between the years 2030 and 2040.

(8) Experts also believe that, under current financial and regulatory conditions, the disparity in access will be exacerbated with the deployment of next generation broadband capability.

(9) The disparity in current broadband access to the Internet, the slow pace of deployment of next generation broadband capability, and the projected disparity in access to such capability will likely prove detrimental to economic expansion.

(10) It is, therefore, appropriate for Congress to take action to narrow the current and future disparity in the level of broadband access to the Internet, and to accelerate deployment of next generation broadband capability.

(b) PURPOSE.—The purpose of this Act is to accelerate deployment of current generation broadband access to the Internet for users located in certain low income and rural areas and to accelerate deployment of next generation broadband access for all Americans.

SEC. 3. BROADBAND CREDIT.

(a) IN GENERAL.—Subpart E of part IV of chapter 1 of the Internal Revenue Code of 1986 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

"SEC. 48A. BROADBAND CREDIT.

"(a) GENERAL RULE.—For purposes of section 46, the broadband credit for any taxable year is the sum of—

"(1) the current generation broadband credit, plus

''(2) the next generation broadband credit.

''(b) CURRENT GENERATION BROADBAND CREDIT; NEXT GENERATION BROADBAND CREDIT.—For purposes of this section—

''(1) CURRENT GENERATION BROADBAND CREDIT.—The current generation broadband credit for any taxable year is equal to 10 percent of the qualified expenditures incurred with respect to qualified equipment delivering current generation broadband services to rural subscribers or underserved subscribers and taken into account with respect to such taxable year.

''(2) NEXT GENERATION BROADBAND CREDIT.—The next generation broadband credit for any taxable year is equal to 20 percent of the qualified expenditures incurred with respect to qualified equipment delivering next generation broadband services to all rural subscribers, all underserved subscribers, or any other residential subscribers and taken into account with respect to such taxable year.

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified expenditures with respect to qualified equipment shall be taken into ac-

count with respect to the first taxable year in which—

"(A) current generation broadband services are delivered through such equipment to rural subscribers or underserved subscribers, or

"(B) next generation broadband services are delivered through such equipment to rural subscribers, underserved subscribers, or any other residential subscribers.

"(2) DELIVERY OF SERVICES.—For purposes of paragraph (1), the delivery of current generation broadband services or next generation broadband services through qualified equipment occurs when such class of service is purchased by and provided to at least 10 percent of the subscribers described in subsection (b) which such equipment is capable of serving through the legal or contractual area access rights or obligations of the provider.

"(d) SPECIAL ALLOCATION RULES.—

"(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the current generation broadband credit under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are delivered, if the qualified equipment is capable of serving both

the subscribers described under subsection (b)(1) and other subscribers, the qualified expenditures shall be multiplied by a fraction—

"(A) the numerator of which is the sum of the total potential subscriber populations within the rural areas and the underserved areas which the equipment is capable of serving with current generation broadband services, and

"(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

"(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the next generation broadband credit under subsection (a)(2) with respect to qualified equipment through which next generation broadband services are delivered, if the qualified equipment is capable of serving both the subscribers described under subsection (b)(2) and other subscribers, the qualified expenditures shall be multiplied by a fraction—

"(A) the numerator of which is the sum of—

''(i) the total potential subscriber populations within the rural areas and underserved areas, plus

''(ii) the total potential subscriber population of the area consisting only of residential subscribers not described in clause (i),

which the equipment is capable of serving with next generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with next generation broadband services.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial

mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 1,500,000 bits per second to the subscriber and at least 200,000 bits per second from the subscriber.

''(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

''(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber and at least 5,000,000 bits per second from the subscriber.

''(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means a person who purchases broadband services which are delivered to the permanent place of business of such person.

''(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the radio transmission of energy.

''(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of a digitized transmission signal which is assembled into packets or cells.

''(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment—

''(A) a cable operator,

''(B) a commercial mobile service carrier,

''(C) an open video system operator, or

''(D) a satellite carrier, telecommunications carrier, or other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

"(12) QUALIFIED EQUIPMENT.—

"(A) IN GENERAL.—The term 'qualified equipment' means equipment capable of providing current generation broadband services or next generation broadband services at any time to each subscriber who is utilizing such services.

"(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

"(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

"(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

"(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

"(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

"(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation

broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

''(13) QUALIFIED EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified expenditure' means any amount—

''(i) chargeable to capital account with respect to the purchase and installation of qualified equipment (including any up-

grades thereto) for which depreciation is allowable under section 168, and

''(ii) incurred after December 31, 2001, and before January 1, 2006.

''(B) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any expenditure with respect to the launching of any satellite equipment.

''(14) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means an individual who purchases broadband services which are delivered to such individual's dwelling.

''(15) RURAL AREA.—The term 'rural area' means any census tract which—

''(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

''(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(16) RURAL SUBSCRIBER.—The term 'rural subscriber' means a residential subscriber residing in a dwelling located in a rural area or nonresidential

subscriber maintaining a permanent place of business located in a rural area.

''(17) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for point-to-multipoint distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-multipoint distribution.

''(18) SUBSCRIBER.—The term 'subscriber' means a person who purchases current generation broadband services or next generation broadband services.

''(19) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153 (44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include a commercial mobile service carrier.

''(20) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(21) UNDERSERVED AREA.—The term 'underserved area' means any census tract which is located in—

''(A) an empowerment zone or enterprise community designated under section 1391,

''(B) the District of Columbia Enterprise Zone established under section 1400,

''(C) a renewal community designated under section 1400E, or

''(D) a low-income community designated under section 45D.

''(22) UNDERSERVED SUBSCRIBER.—The term 'underserved subscriber' means a residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining

a permanent place of business located in an underserved area.

''(f) DESIGNATION OF CENSUS TRACTS.—The Secretary shall, not later than 90 days after the date of the enactment of this section, designate and publish those census tracts meeting the criteria described in paragraphs (15) and (21) of subsection (e).''.

(b) CREDIT TO BE PART OF INVESTMENT CREDIT.—Section 46 of the Internal Revenue Code of 1986 (relating to the amount of investment credit) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) the broadband credit.''

(c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 501(c)(12)(B) of the Internal Revenue Code of 1986 (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) from sources not described in subparagraph (A), but only to the extent such income does not in any year exceed an amount equal to the credit for qualified

expenditures which would be determined under section 48A for such year if the mutual or cooperative telephone company was not exempt from taxation.''

(d) CONFORMING AMENDMENT.—The table of sections for subpart E of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 48 the following new item:

''Sec. 48A. Broadband credit.''

(e) REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or rate-making procedures that would have the effect of confiscating any credit or portion thereof allowed under section 48A of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the broadband credit under section 48A of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as

well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 48A of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified expenditures satisfies the requirements of section 48A of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 48A of such Code.

Until the Secretary prescribes such regulations, taxpayers may base such determinations on any reasonable method that is consistent with the purposes of section 48A of such Code.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to expenditures incurred after December 31, 2001.

(2) SPECIAL RULE.—The amendments made by subsection (c) shall apply to amounts received after December 31, 2001.

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